

Message Text

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E. O. 11652: N/A

TAGS: CI, PGOV, PINT, SHUM

SUBJECT: GOC CONSTITUTIONAL REFORM: HABEAS CORPUS UNDER STATE
OF SIEGE

REF: SANTIAGO 6815

1. THE JULY 15 ISSUE OF "ERCILLA" NEWSMAGAZINE CARRIES AN
INTERVIEW WITH CHILEAN COMMITTEE FOR CONSTITUTIONAL REFORM
PRESIDENT ENRIQUE ORTUZAR, WHO DISCUSSES THE DRAFTING OF THE
CONSTITUTION AND THE PROMULGATION OF FOUR CONSTITUTIONAL ACTS
(REFTEL). ONE POINT MAY BE SIGNIFICANT.

2. ORTUZAR STATES THAT THE EXECUTIVE HAS HAD STATE OF SIEGE
AUTHORITY SINCE THE 1833 CONSTITUTION -- TO ARREST PEOPLE IN THEIR
HOMES, MOVE THEM FROM PLACE TO PLACE AND TO DETAIN THEM IN PLACES
NOT RESERVED FOR COMMON CRIMINALS.

3. NEVERTHELESS, EMPHASIZES ORTUZAR, UNDER THE PROPOSED
CONSTITUTIONAL
ACTS, "THE RIGHT TO HABEAS CORPUS ("AMPARO") WOULD BE EXTENDED
WHENEVER THE REPECTIVE LEGAL NORMS ARE VIOLATED. FOR EXAMPLE,
IF A PERSON IS DETAINED BY AN AUTHORITY NOT COMPETENT (TO
MAKE THE ARREST), OR IS HELD IN A PLACE RESERVED FOR COMMON
CRIMINALS, OR IS NOT TURNED OVER TO THE COURTS, OR TO THE INTERIOR
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MINISTRY WITHIN THE SPECIFIED TIME FRAME (THEN, HABEAS CORPUS

WOULD APPLY)."

4. COMMENT: THE EXTENSION OF HABEAS CORPUS COVERAGE TO STATE OF SIEGE DETENTIONS WOULD BE A SIGNIFICANT STEP FORWARD IN HUMAN RIGHTS. THE DEPARTMENT WILL RECALL THAT THE CHILEAN CIVILIAN JUDICIARY HAS CONSISTENTLY RULED THAT THE ISSUANCE OF WRITS OF HABEAS CORPUS IN STATE OF SIEGE CASES FALLS OUTSIDE OF ITS JURISDICTION.

5. WE OBVIOUSLY MUST WAIT TO SEE WHAT ACTUALLY IS PROMULGATED, AND THEN HOW THE JUDICIARY PUTS ITS NEW AUTHORITY INTO PRACTICE AND HOW THE GOVERNMENT REACTS. DECREE LAW 1009 OF MAY 1975 AND SUPREME DECREE 187 OF JANUARY 1976 WERE INTENDED TO REGULATE DETENTIONS UNDER STATE OF SIEGE AUTHORITY. GIVING THE JUDICIARY A MONITORING ROLE SHOULD GUARANTEE THAT EXECUTIVE AGENCIES FOLLOW THE LAW. IT WOULD NOT, OF COURSE, AFFECT THE EXECUTIVE'S NEAR ABSOLUTE POWER OF DETENTION UNDER THE STATE OF SIEGE.

6. THIS KIND OF HABEAS CORPUS PROVISION WOULD RESPOND TO ONE OF THE SPECIFIC CONCERNS ON HUMAN RIGHTS STATED BY SECRETARY KISSINGER IN HIS JUNE 8 SPEECH AT THE OASGA IN SANTIAGO.
POPPER

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